



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

February 19, 2015

CHAN

Memorandum for: Deputy Commissioner, Trials

Re: **Lieutenant Tom Warren**
Tax Registry No. 923260
34 Precinct
Disciplinary Case Nos. 2012-7689 & 2013-10950

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on June 11 and June 12, 2014 and was charged with the following:

DISCIPLINARY CASE NO. 2012-7689

1. Said Lieutenant Warren Tom, while assigned to Police Service Area No. 3, on or about May 26, 2012, having been advised that he could not take off his scheduled tour of duty, wrongfully and without just cause failed to appear for work and was absent for his entire scheduled tour without permission or authority.

P.G. 203-05, Page 1, Paragraph 1

**PERFORMANCE ON DUTY -
GENERAL REGULATIONS**

DISCIPLINARY CASE NO. 2013-10950

1. Said Lieutenant Warren Tom, while on duty and assigned to the 34th Precinct as a Patrol Supervisor, on or about March 30, 2013, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Lieutenant wrongfully directed Police Officer Giancarlo Alia and Police Officer Michael Jenkins to classify a reported robbery as a petit larceny and an assault. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT - PROHIBITED
CONDUCT
PATROL SUPERVISOR**

P.G. 202-17

LIEUTENANT WARREN TOM DISCIPLINARY CASE NOs. 2012-7689 & 2013-10950

2. Said Lieutenant Warren Tom, while on duty and assigned to the 34th Precinct as a Patrol Supervisor, on or about March 30, 2013, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Lieutenant wrongfully instructed Police Officer Giancarlo Alia and Police Officer Michael Jenkins to direct a complainant to alter her written statement in connection with a Domestic Incident Report. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT – PROHIBITED
CONDUCT**

P.G. 202-17

PATROL SUPERVISOR

In a Memorandum dated December 29, 2014, Assistant Deputy Commissioner Claudia Daniels-DePeyster found the Respondent Guilty of Specification No. 1 in Disciplinary Case No. 2012-7689, and Not Guilty of Specification No. 1 and Guilty of Specification No. 2 in Disciplinary Case No. 2013-10950. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the circumstances and the issues in this matter and deem that the Respondent's combined misconduct warrants a higher penalty. Therefore, the Respondent is to forfeit fifteen (15) vacation days, as a disciplinary penalty.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT

December 29, 2014

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Warren Tom
Tax Registry No. 923260
34 Precinct
Disciplinary Case Nos. 2012-7689 & 2013-10950

The above-named member of the Department appeared before me on June 11 and June 12, 2014, charged with the following:

Disciplinary Case No. 2012-7689

1. Said Lieutenant Warren Tom, while assigned to Police Service Area No. 3, on or about May 26, 2012, having been advised that he could not take off his scheduled tour of duty, wrongfully and without just cause failed to appear for work and was absent for his entire scheduled tour without permission or authority.

P.G. 203-05, Page 1, Paragraph 1 – PERFORMANCE ON DUTY –
GENERAL REGULATIONS

Disciplinary Case No. 2013-10950

1. Said Lieutenant Warren Tom, while on duty and assigned to the 34 Precinct as a Patrol Supervisor, on or about March 30, 2013, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Lieutenant wrongfully directed Police Officer Giancarlo Alia and Police Officer Michael Jenkins to classify a reported robbery as a petit larceny and an assault. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT –
PROHIBITED CONDUCT

P.G. 202-17 – PATROL SUPERVISOR

2. Said Lieutenant Warren Tom, while on duty and assigned to the 34 Precinct as a Patrol Supervisor, on or about March 30, 2013, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Lieutenant wrongfully instructed Police Officer Giancarlo Alia and Police Officer Michael Jenkins to direct a complainant to alter her written statement in connection with a Domestic Incident Report. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
PROHIBITED CONDUCT

P.G. 202-17 – PATROL SUPERVISOR

The Department was represented by Joshua Kleiman, Esq., Department Advocate's Office, and Respondent was represented by James Moschella, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2012-7689

Respondent is found Guilty as charged.

Disciplinary Case No. 2013-10950

Respondent is found Not Guilty of Specification No. 1 and Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

The testimony and other evidence presented at this trial regarding these two unrelated disciplinary cases will be summarized separately under the respective case number for each set of charges.

Disciplinary Case No. 2012-7689Introduction

It was undisputed that days prior to Memorial Day weekend 2012, Respondent submitted a Leave of Absence Report (UF-28) to the administrative lieutenant, William Beneventano, requesting Saturday, May 26 off from work so that he could pick his children up at the airport. The request was brought to Respondent's commanding officer, Deputy Inspector Obe, who denied it. Respondent, nevertheless, called his command's desk officer on that Saturday to say that he was taking an emergency day (E-day). Prior to making that call, Respondent had arranged for Sergeant Mohammed Karimzada to adjust his tour so that there would be supervisory coverage.

The Department called Lieutenants Omally Benfield and William Beneventano as witnesses. Respondent testified in his own behalf.

Benfield is the integrity control officer at Police Service Area (PSA) 3. He investigated the circumstances surrounding Respondent's absence from work on May 26, 2012. According to the roll call [Department's Exhibit (DX) 1], Respondent was scheduled to work a 2:00 p.m. by 11:00 p.m. tour that day. It was also noted on the roll call that there would be "absolutely no excusals" because 21.05 percent of platoon personnel had been granted the day off. Benfield explained that "absolutely no excusals" meant that no one could take an E-day day without the approval of commanding officer Obe. This occurred whenever the number of people off from work exceeded 14 percent. Benfield conceded that the 21.05 statistic pertained only to personnel

in the rank of police officer, and that Respondent would have never seen the roll call page stating "absolutely no excusals."

In a September 20, 2012, official Department interview Respondent stated that what Beneventano told him was that the UF-28 was denied because there would be inadequate supervisory coverage. This gave Respondent the impression that a day off would be possible so long as coverage was arranged. Because Karimzada was able to change his tour and fill in as patrol supervisor, Respondent believed that any issue of inadequate supervisory coverage had been solved. The roll call adjustment sheet showed that Karimzada did in fact change his tour from a 5:15 p.m. start time to a 2:15 p.m. start time. [DX 2 and 2A are the compact disc recording and transcript of the September 2012 interview.]

Patrol services were not compromised in any way due to Respondent taking the day off. Benfield confirmed that it was common practice for lieutenants in the command to take days off without clearing it first with Obe. It was only because it was a "no excusal" day that getting Obe's permission was necessary. Benfield's investigation resulted in Obe making a recommendation that Respondent receive a Command Discipline.

Beneventano testified that Obe denied Respondent's UF-28 because Memorial Day was usually a busy weekend and the Housing Bureau always had a policy of no excusals for that period. He explained that no excusals meant that only personnel on regular sick or annual vacation could take off. After the UF-28 was denied, Respondent told Beneventano that he would have to leave by 9:00 p.m. on Saturday and asked him what he should do. Beneventano advised Respondent to either speak with Obe about the matter or come to work and then request lost time if nothing was going on. Beneventano recalled specifically telling Respondent in their conversation that there were no excusals for the weekend. According to Beneventano, had

Respondent had a legitimate emergency, he should have contacted Obe or the executive officer by cell phone.

Respondent, a 16-year member of the Department, has never before been the subject of Department charges. He testified that when he spoke with Beneventano earlier in the week about taking Saturday off, Beneventano told him that there would be no coverage. Based on that conversation, Respondent arranged for someone else to pick his children up at the airport. When that plan fell through at the last minute, he arranged for Karimzada to adjust his tour and cover patrol. Though Karimzada had originally been assigned to a satellite location that day, Respondent explained that it was not uncommon for one supervisor to cover both the satellite and patrol. Respondent further explained that it was common practice in PSA 3 for lieutenants to take days off as long as there was adequate coverage. Sergeants and lieutenants were interchangeable for purposes of supervising patrol, and there was often just one supervisor for the whole command. He did not consult with a supervisor before reassigning Karimzada and taking the day off.

Respondent knew that the no excusal policy was often in effect on weekends and holidays, though he did not see the roll call stating that the policy was in effect that specific weekend. He explained that the policy mainly applied to police officers because sector cars needed to be filled, but it was a different story for supervisors so long as there was adequate coverage.

Disciplinary Case No. 2013-10950Introduction

On March 30, 2013, Police Officers Giancarlo Alia and Michael Jenkins responded to a job that came over the radio as a family dispute on [REDACTED] the 34 Precinct. Upon their arrival at the scene, the complainant explained to them that Person A, her ex-boyfriend and father of her child, had come to her apartment and demanded her cell phone. The complainant had the phone in her hand and refused to give it to him. Person A proceeded to push her to the floor, bite her hand, and leave the premises with the phone. The officers, believing the complainant was a robbery victim, requested the response of the patrol supervisor. When Respondent arrived at the location, he told the officers that they were mistaken, that the case constituted the lesser crimes of petit larceny and assault in the third degree. Later, at the station house, Respondent had The complainant rewrite a supporting deposition that she had prepared about the incident.

The Department called the complainant, Police Officer Giancarlo Alia, and Police Officer Michael Jenkins as witnesses. Respondent testified in his own behalf.

The complainant testified that on March 30, 2013 she was staying at her mother's apartment. Person A kept knocking on the door. She let him in because it was late and she did not want the noise to wake her family. Person A wanted to see her phone because he was jealous and wanted to see who she had been in contact with. After pushing her to the floor, Person A bit her hand until she released the phone. She called the police after Person A left the apartment with her phone.

The complainant told the responding officers, Alia and Jenkins, about what happened. The officers transported her to the 34 Precinct station house to take photographs of her injuries and prepare a Domestic Incident Report (DIR). When The complainant submitted her supporting deposition, the officers told her to change it. The complainant learned that Respondent wanted her to change her story. Her DIR was changed from "He stoled my phone" to "He took my phone." She started to rewrite the deposition but then left the building because she was so frustrated with the experience. Jenkins convinced her to come back inside. She ended up signing a deposition under the following statement written by Jenkins: "I do not want to write anything, I agree with the officer's statement." The complainant did not recall seeing Respondent until after she was brought to the station house. [DX 3 is the complainant's first supporting deposition, on which the word "stoled" was crossed out and replaced with "took." DX 4 is the deposition she started to write but did not finish because she left the command. DX 5 is the deposition she signed under the statement Jenkins wrote about agreeing with the police.]

Alia testified that he met Respondent in the lobby of the complainant's building, and he relayed to him what the complainant had reported: that the complainant did not want to give Person A her phone, so Person A bit her hand, removed the phone from her, and left the location. Respondent told Alia that it was a case of assault in the third degree and petit larceny. In Alia's mind the case was a robbery, so he reiterated to Respondent the part about Person A biting the complainant's hand and physically removing the phone from her. After conducting an unsuccessful canvass with the complainant, the officers transported her to the station house.

At Respondent's request, Alia brought him the complainant's supporting deposition for review. Respondent read it and told Alia, "You gotta give this back to her; she's gotta rewrite this. I'm not taking a robbery for this. It's not like [Person A] took her phone forever." When Alia relayed

this information to the complainant, she became upset and started to cry. She left the room. Out in the muster room, Alia was present when Respondent told the complainant, "It's not like we're not doing a report. We're going to do a report for an assault. He'll get locked up for the assault, but why do I have to take a robbery? It's not like he took your phone forever. You're going to get the phone back eventually." Jenkins brought the complainant back inside, and she signed the deposition under the statement Jenkins wrote about agreeing with the police.

After the complainant left, Respondent told Alia to prepare the complaint report but instructed him to leave out the part about Person A forcibly taking the phone when he bit the complainant's hand. Respondent instructed Alia to write instead that Person A assaulted the complainant and then left with the phone. Before submitting the report, Alia approached his union delegate about the situation. The delegate advised him to do as he was ordered but to document everything. The civilian member who entered the report in the computer subsequently approached Alia and told him that she could not finish the entry because "you can't have an assault with a larceny. This is like a robbery." Alia told the civilian to talk to Respondent about it. Several days later, the domestic violence sergeant also questioned Alia about the matter. He subsequently learned that the case was reclassified as a robbery. [DX 6 is the original complaint report.]

Alia confirmed that while speaking with the complainant, he got the impression that the reason Person A wanted the phone was to see if the complainant was talking to another man. This was the first time that Alia received instruction from Respondent to change a crime classification.

Jenkins added that at one point after being told to rewrite the deposition, the complainant left the building and he followed her to the parking lot. She asked him to drive her home if he did not believe her story. Jenkins convinced her to go back inside. Because the complainant was still

unwilling to rewrite the deposition, however, Jenkins wrote the statement about her agreeing with the police. the complainant signed the statement, and Jenkins drove her home.

Jenkins never before received instruction from Respondent to change a crime classification.

Respondent testified that when he responded to the job on [REDACTED] the officers met him in the lobby and described the situation to him. According to Respondent, the officers told him that complnt was injured in a physical altercation, and that Person A took her phone because he wanted to see who she had been communicating with. The officers believed the case was a robbery, but in Respondent's opinion it was an assault and petit larceny. He explained why he did not consider it a robbery: "Because of... what [the officers] described to me. . . . [Person A] just wanted to find out who [the complainant] was texting or calling.... [He was] not taking a phone away from her to... sell it, to not give it back, or anything like that." In other words, he did not believe Person A took the phone for monetary gain, and he thought Person A would return the phone at some point. He also considered the force used against Fernandez and the taking of her phone to be two separate events. He instructed the officers on how to classify the case, knowing that the paperwork would be reviewed by the domestic violence officer, the detective squad, the crime analysis office, and the commanding officer.

Respondent had no personal interest in whether the case was classified as a felony or a misdemeanor. Because the 34 Precinct's crime statistics were at an all-time low that year, having one more robbery would not have made a difference.

Back at the station house, the officers informed him that the complainant was fil ling out her supporting deposition as if the case were a robbery. Because the complaint report and DIR needed to be consistent, he instructed the officers to talk to her about it. the complainant became

upset, so Respondent went into the room and explained to her and the officers why he did not think the case should be classified as a robbery. Respondent later learned that the domestic violence sergeant re-interviewed the complainant and upgraded the case to robbery.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2012-7689

Respondent stands charged with failing to appear at work and being absent for his entire scheduled tour without permission or authority. When Respondent submitted a UF-28 to take the Saturday of Memorial Day weekend off, it was denied by his commanding officer, Obe. Because Respondent needed to pick his children up at the airport, he took an E-day that day instead of reporting for his regularly scheduled tour. Before doing so, he arranged for Sergeant Karimzada to change his tour so that there would be adequate supervisory coverage on patrol.

There would have been no way for Respondent to have seen the roll call stating "no excusals" on the day that he took off, and according to Respondent he was never specifically informed beforehand that his request for the day off had been denied due to the no excusal policy being in effect. Respondent could have, nevertheless, assumed that the policy was in effect since, as he conceded, the policy was often in effect on weekends and holidays.

Respondent's claim that the no excusal policy did not apply to supervisors the way that it did to police officers may have merit, and it may also be true that it was common practice in the command for lieutenants to take days off so long as coverage was arranged for. Even in light of these arguments, however, the Court still has trouble with the fact that Respondent took a day off on Memorial Day weekend even after the commanding officer specifically denied his request. It was presumptuous of Respondent to believe that he could change Karimzada's tour and take the

day off without first conferring with Obe or anybody of a higher rank. Even if supervisors in PSA 3 enjoyed a certain amount of flexibility in their schedules, Respondent did not know what Obe's staffing goals were for the Memorial Day weekend. It was quite possible that Obe denied Respondent's UF-28 in the first place because she wanted a lieutenant or multiple supervisors to be available on patrol during that notoriously busy period. Moreover, by taking an E-day, Respondent created a situation where Karimzada needed to cover both his original assignment in the satellite location and Respondent's assignment as patrol supervisor.

Accordingly, Respondent is found Guilty as charged.

Disciplinary Case No. 2013-10950

Respondent is charged in Specification No. 1 with wrongfully directing Officers Alia and Jenkins to classify a reported robbery as a petit larceny and an assault. Alia and Jenkins called Respondent to the scene because they believed they had a robbery case on their hands. After getting briefed on the facts, Respondent came to a determination that what they had instead was a case of petit larceny and assault. In reaching his determination, Respondent focused on the perpetrator's intent. Person A took the phone because, as a jealous ex-boyfriend, he wanted to see who the complainant had been in contact with. Respondent believed that Person A would ultimately return the phone to its rightful owner. In his mind, this was not a robbery because in a typical robbery case the perpetrator takes the phone to sell on the black market and has no intention of returning the property to the victim.

The Court finds that Respondent successfully articulated a reasonable explanation for classifying the case as he did. Although his reasoning was flawed since he should have focused on the fact that the phone was forcibly taken from the complainant instead of on Person A's intent, the

Court is persuaded that he made his on-the spot judgment call in good faith. There was no evidence to suggest that he intentionally misclassified the case as part of some scheme to downgrade crime statistics for personal benefit or the benefit of his commanding officer. Neither Alia nor Jenkins had ever before received instruction from Respondent about changing crime classifications. And, as Respondent pointed out, it was never intended that he would have the final word on the matter of classification. Respondent knew when he advised the officers on how to classify the case that the report would be reviewed by the domestic violence officer, the detective squad, the crime analysis office, and the commanding officer.

What the Court does find troubling, in contrast, is the misconduct alleged in Specification No. 2: that Respondent instructed the officers to direct the complainant to alter the written statement section of the DIR. The DIR written statement is the place where a victim of domestic violence has the opportunity to explain in her own words the offenses committed against her. It also serves as a supporting deposition, which means that with her signature the complainant swore that what she wrote on the document was true. While Respondent explained that he had attempted to persuade the complainant to change her deposition so that it would be consistent with the crime classification on the complaint report, the Court does not see any reason that would justify a member of the service pressuring a crime victim to alter a deposition. By doing that to the complainant, an injured robbery and domestic violence victim was made to feel like the police did not believe her story. It also put the complainant in a position where, were she to testify in court, her deposition could be used against her as a prior inconsistent statement for impeachment purposes.

Accordingly, Respondent is found Not Guilty of Specification No. 1 and Guilty of Specification No. 2.

PENALTY

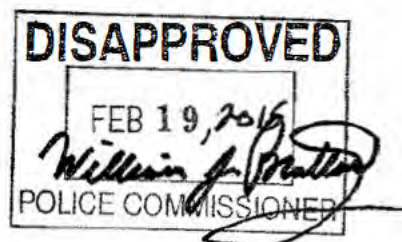
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on August 31, 1998. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of being absent for his entire scheduled tour without permission and of wrongfully instructing officers to direct a complainant to alter her written statement on a DIR. The Assistant Department Advocate recommended a penalty of 15 vacation days, noting that this took into consideration Respondent's exemplary record, as precedent alone would call for a more severe penalty. The Court finds this recommendation to be reasonable and fair. Because Respondent has been found Guilty of just two of the three specifications brought against him, however, it is recommended that he forfeit ten vacation days.

Respectfully submitted,

Claudia Daniels-DePeyster CDP

Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials



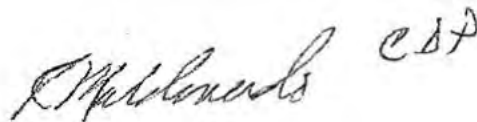
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT WARREN TOM
TAX REGISTRY NO. 923260
DISCIPLINARY CASE NOS. 2012-7689 & 2013-10950

On his last three annual performance evaluations, Respondent twice received an overall rating of 4.5 “Extremely Competent/Highly Competent” and was once rated 4.0 “Highly Competent.” [REDACTED]

[REDACTED]. He has no prior formal disciplinary record.

For your consideration.

Handwritten signature of Claudia Daniels DePeyster in cursive, followed by the initials "CDP".

Claudia Daniels DePeyster
Assistant Deputy Commissioner – Trials